

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

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HOUSE BILL 1912

By: Representatives Rodgers, Bennett, Biggs, Childers, Cook, Eason, Gillespie, Goss, Green, Hausam, Holt, Ledbetter, Magnus, Milligan, Rankin, Roebuck, Salmon, C. Taylor, Teague, Verkamp, W. Walker
By: Senators P. Malone, Fitch, Hill

For An Act To Be Entitled

AN ACT TO REQUIRE ALL EMPLOYEES OF PROVIDERS WHO
OFFER DIRECT CARE SERVICES TO DEVELOPMENTALLY
DISABLED ADULT PERSONS TO PASS CRIMINAL RECORDS
CHECKS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO REQUIRE ALL EMPLOYEES OF
PROVIDERS OF CARE TO DEVELOPMENTALLY
DISABLED ADULT PERSONS TO PASS CRIMINAL
RECORDS CHECKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 48 is amended to add the following additional subchapter:

20-48-701. Definitions.

As used in this subchapter:

(1) "Bureau" means the Identification Bureau of the Arkansas State Police;

(2) "Care" means treatment, services, assistance, education, training, instruction, or supervision for which the service provider is reimbursed either directly or by arrangement with a government agency or receives reimbursement or payment either directly or indirectly from Medicaid;

(3) "Central Registry check" means a review of a Central Registry data base maintained by a state agency;

(4) "Determination" means a service provider's determination that an

1 applicant or employee is or is not disqualified from employment based on the
2 criminal history of the applicant or employee;

3 (5) "Developmentally disabled person" means persons with a disability
4 which:

5 (A) Is attributable to mental retardation, cerebral palsy,
6 epilepsy, or autism;

7 (B) Is attributable to any other condition of a person found to
8 be closely related to mental retardation because it results in an impairment
9 of general intellectual functioning or adaptive behavior similar to those of
10 mentally retarded persons or requires treatment and services similar to those
11 required for mentally retarded persons; or

12 (C) Is attributable to dyslexia resulting from a disability
13 associated with mental retardation, cerebral palsy, epilepsy, or autism;

14 (6) "Employee" means any adult person residing in an alternative
15 living home and any person who provides care to individuals with disabilities
16 on behalf of, under the supervision of, or by arrangement with a service
17 provider or any person employed by a service provider, including persons
18 provided by or pursuant to contract with a private placement agency or
19 contract staffing agency, unless the person is a family member or a volunteer
20 or works in an administrative capacity and does not provide direct patient
21 care;

22 (7) "Index" means the database of completed background checks
23 maintained by the Bureau that have been conducted on applicants for
24 employment with and employees of a service provider;

25 (8) "Licensing agency" means the government agency charged with
26 licensing the service provider to provide care to developmentally disabled
27 persons;

28 (9) "National criminal history record check" means a review of
29 criminal history records maintained by the Federal Bureau of Investigation
30 based on fingerprint identification or other positive identification methods;

31 (10) "Report" means a statement of the criminal history of an
32 applicant or employee of the service provider issued by the Bureau;

33 (11) "Service provider" means the qualified entity responsible for
34 direct care services to developmentally disabled persons; and

35 (12) "State criminal history record check" means a review of state
36 criminal history records conducted by the Bureau.

1
2 20-48-702. Mandatory criminal history records checks for applicants
3 and employees of service providers.

4 (a)(1) When a person applies for a position as an employee of a
5 service provider, the service provider shall require each applicant pursuant
6 to this section to complete a criminal history record check form. Prior to
7 employment the applicant must be fingerprinted. Such fingerprints shall be
8 available for use by the Bureau and for transmittal to the FBI for a national
9 criminal history record check. The information obtained from the national
10 criminal history record check conducted pursuant to this section may be used
11 by the service provider to determine the applicant's eligibility for
12 employment.

13 (2) If the service provider intends to make an offer of
14 employment to the applicant, the service provider shall within five (5)
15 business days of that decision forward the criminal history record check form
16 and the applicant's fingerprint card to the Bureau accompanied by appropriate
17 payment and request the Bureau to review the Bureau's index of criminal
18 history records.

19 (3) Within three (3) business days of the receipt of a request
20 to review the index, the Bureau shall notify the service provider whether the
21 index contains any criminal history records on the applicant.

22 (4)(A) A service provider may make an offer of temporary
23 employment to an applicant, pending receipt of notification from the Bureau
24 after conducting a Central Registry check.

25 (B) If no finding of fault records regarding the applicant
26 are found in the Central Registry, then the service provider may continue to
27 temporarily employ the applicant while the Bureau completes a criminal
28 history record check.

29 (C)(i) If a criminal history record regarding the
30 applicant is found, then the applicant is temporarily disqualified from
31 employment until the licensing agency issues a determination.

32 (ii) If the licensing agency issues a determination
33 that the applicant is qualified, then the service provider may employ the
34 applicant.

35 (b)(1) Except as provided in subdivision (b)(2) of this section, the
36 Bureau shall conduct a national criminal history record check on an applicant

1 or employee upon receiving a request from a service provider.

2 (2) If the service provider can verify that the applicant or
3 employee has been employed within the State of Arkansas to provide care to
4 individuals with disabilities within sixty (60) days before the application
5 or request from the service provider, or has lived continuously in the State
6 of Arkansas for the past five (5) years, the Bureau shall conduct only a
7 state criminal history record check on the applicant or employee.

8 (3) If the service provider determines the need to utilize
9 temporary employees provided by a private placement agency or other contract
10 staffing company, it shall be the responsibility of the private placement
11 agency or contract staffing agency to initiate the criminal background check
12 as provided by this subchapter, before the placement of the person in the
13 service provider's facility, and the private placement agency or contract
14 staffing agency must document the pending background check or the final
15 determination for the service provider.

16 (c)(1) Upon completion of a criminal history record check on an
17 applicant or employee, the Bureau shall issue a report to the entity making
18 the request.

19 (2) The licensing agency shall determine whether the applicant
20 or employee is disqualified from employment with the service provider and
21 shall forward its determination to the service provider.

22 (3) If the licensing agency determines that an applicant or
23 employee is disqualified from employment, then the service provider shall
24 terminate the employment of the employee or shall deny employment to the
25 applicant.

26 (d) Before making an offer of employment to an applicant, and on an
27 ongoing basis for current employees, refer to § 20-48-711(b), a service
28 provider shall inform applicants and employees that continued employment is
29 contingent upon the results of periodic criminal history record checks and
30 that the applicant or employee has the right to obtain a copy of the report
31 from the Bureau.

32
33 20-48-703. Evidence of records checks.

34 Each service provider shall maintain on file, subject to inspection by
35 the Arkansas Crime Information Center, the Identification Bureau of the
36 Arkansas State Police, or the licensing agency, evidence that criminal

1 history record checks have been initiated on all applicants and employees, as
2 required by § 20-48-711(b), and a copy of each determination is received from
3 the licensing agency.

4
5 20-48-704. Disqualification from employment - Denial or revocation -
6 Penalties.

7 (a)(1) A licensing agency shall issue a determination that a person is
8 disqualified from employment with a service provider if the person has been
9 found guilty of or plead guilty or nolo contendere to any of the offenses
10 listed in subsection (b) of this section; and

11 (2) A service provider shall not knowingly employ a person who
12 has pleaded guilty or nolo contendere to or has been found guilty of any of
13 the offenses listed in subsection (b) of this section by any court in the
14 State of Arkansas or of any similar offense by a court in another state or of
15 any similar offense by a federal court.

16 (b)(1) Capital murder, as prohibited in § 5-10-101;

17 (2) Murder in the first degree and second degree, as prohibited
18 in §§ 5-10-102 and 5-10-103;

19 (3) Manslaughter, as prohibited in § 5-10-104;

20 (4) Negligent homicide, as prohibited in § 5-10-105;

21 (5) Kidnapping, as prohibited in § 5-11-102;

22 (6) False imprisonment in the first degree, as prohibited in §
23 5-11-103;

24 (7) Permanent detention or restraint, as prohibited in § 5-11-
25 106;

26 (8) Robbery, as prohibited in § 5-12-102;

27 (9) Aggravated robbery, as prohibited in § 5-12-103;

28 (10) Battery, as prohibited in §§ 5-13-201, 5-13-202, and 5-13-
29 203;

30 (11) Aggravated assault, as prohibited in § 5-13-204;

31 (12) Introduction of controlled substance into body of another
32 person, as prohibited in § 5-13-210;

33 (13) Terroristic threatening in the first degree, as prohibited
34 in § 5-13-301;

35 (14) Rape and carnal abuse in the first degree, second degree,
36 and third degree, as prohibited in §§ 5-14-103 - 5-14-106;

1 (15) Sexual abuse in the first degree and second degree, as
2 prohibited in §§ 5-14-108 and 5-14-109;

3 (16) Sexual solicitation of a child, as prohibited in § 5-14-
4 110;

5 (17) Violation of a minor in the first degree and second degree,
6 as prohibited in §§ 5-14-120 and 5-14-121;

7 (18) Incest, as prohibited in § 5-26-202;

8 (19) Offenses against the family, as prohibited in §§ 5-26-303 -
9 5-26-306;

10 (20) Endangering the welfare of an incompetent person in the
11 first degree, as prohibited in § 5-27-201;

12 (21) Endangering the welfare of a minor in the first degree, as
13 prohibited in § 5-27-203;

14 (22) Permitting child abuse, as prohibited in § 5-27-221(a)(1)
15 and (a)(3);

16 (23) Engaging children in sexually explicit conduct for use in
17 visual or print media, transportation of minors for prohibited sexual
18 conduct, pandering or possessing visual or print medium depicting sexually
19 explicit conduct involving a child, or use of a child or consent to use of a
20 child in a sexual performance by producing, directing, or promoting a sexual
21 performance by a child, as prohibited in § 5-27-303, § 5-27-304, § 5-27-305,
22 § 5-27-402, and § 5-27-403;

23 (24) Felony adult abuse, as prohibited by § 5-28-103;

24 (25) Theft of property, as prohibited in § 5-36-103;

25 (26) Theft by receiving, as prohibited in § 5-36-106;

26 (27) Arson, as prohibited in § 5-38-301;

27 (28) Felony violation of the Uniform Controlled Substances Act,
28 as prohibited in § 5-64-401;

29 (29) Burglary, as prohibited in § 5-39-201;

30 (30) Promotion of prostitution in the first degree, as
31 prohibited in § 5-70-104;

32 (31) Stalking, as prohibited in § 5-71-229;

33 (32) Forgery, as prohibited in § 5-37-201;

34 (33) Breaking or entering, as prohibited in § 5-39-202;

35 (34) Obtaining a controlled substance by fraud, as prohibited in
36 § 5-64-403; and

1 (35) Criminal attempt, criminal complicity, criminal
2 solicitation, or criminal conspiracy, as prohibited in § 5-3-201, § 5-3-202,
3 § 5-3-301, and § 5-3-401, to commit any of the offenses listed in this
4 subsection.

5 (c)(1) The provisions of this section shall not be waived by the
6 licensing or requesting agency. Except as provided in subdivision (2) of
7 this subsection (c), one (1) conviction for an offense listed in subsection
8 (b) of this section shall not disqualify an applicant for employment if the
9 date of the conviction is at least ten (10) years prior to the date of the
10 application, and the individual has had no criminal convictions of any type
11 or nature during the ten-year period.

12 (2) Because of the serious nature of the offenses and the close
13 relationship to the type of work that is to be performed, the following
14 offenses shall result in permanent disqualification of employment:

15 (A) Capital murder, as prohibited in § 5-10-101;

16 (B) Murder in the first degree and second degree, as
17 prohibited in §§ 5-10-102 and 5-10-103;

18 (C) Kidnapping, as prohibited in § 5-11-102;

19 (D) Rape and carnal abuse in the first degree, second
20 degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;

21 (E) Sexual abuse in the first and second degree, as
22 prohibited in §§ 5-14-108 and 5-14-109;

23 (F) Endangering the welfare of an incompetent person in
24 the first degree, as prohibited in § 5-27-201;

25 (G) Felony adult abuse, as prohibited by § 5-28-103; and

26 (H) Arson, as prohibited in § 5-38-301.

27 (3) An applicant or employee shall not be disqualified from
28 permanent employment if the applicant or employee has been found guilty of or
29 has pleaded guilty or nolo contendere to a misdemeanor if the offense did not
30 involve exploitation of an adult, abuse of a person, neglect of a person,
31 theft, or sexual contact.

32 (d) If a service provider fails or refuses to cooperate in obtaining
33 criminal history record checks, those circumstances shall be grounds to deny
34 or revoke the service provider's license or other operating authority.

35 (e) Any service provider violating this subchapter shall be guilty of
36 a Class A misdemeanor for each violation.

20-48-705. Request for records check - Requirement.

(a) A request for a state criminal history records check on a person shall include a completed statement that:

(1) Contains the name, address, and date of birth appearing on a valid identification document issued by a government entity to the person who is the subject of the check;

(2) Indicates whether the person has been found guilty of or pled guilty or nolo contendere to a crime, and if so, includes a description of the crime and the particulars of the finding of guilt or the plea;

(3) Notifies the person that qualified entities may request reports of state criminal history record checks;

(4) Consents to disclosure of reports and determinations as provided by this subchapter;

(5) Notifies the person that prior to the completion of a state criminal history record check, the service provider may choose to deny the employee unsupervised access to a person to whom the service provider provides care;

(6) Informs the person how to object to the content of reports; and

(7) Contains the notarized signature of the person who is the subject of the check.

(b) Each request for a national criminal history record check shall conform to the requirements for a state criminal history record check and shall include a complete set of fingerprints.

20-48-706. Duties of Identification Bureau and licensing agencies.

(a) After receipt of a request for a criminal history record check, the Identification Bureau shall make reasonable efforts to respond to requests for state criminal history record checks within twenty (20) calendar days and to respond to requests for national criminal history record checks within ten (10) calendar days.

(b)(1) The Bureau shall maintain an index of the results of each applicant's or employee's criminal history record check.

(2) The Bureau shall furnish a report to the service provider upon completion of each criminal history record check and upon request of the

1 licensing agency.

2 (c) The Bureau shall develop forms to be used for criminal history
3 record checks conducted under this subchapter.

4
5 20-48-707. Regulations - Remedies for failure to comply - Challenges
6 to completeness and accuracy of information.

7 (a) The Arkansas Crime Information Center, the Identification Bureau
8 of the Arkansas State Police, and each licensing or requesting agency shall
9 cooperate to prepare forms and promulgate consistent regulations as necessary
10 to implement this subchapter.

11 (b) The licensing agency shall establish remedies to be imposed on a
12 service provider licensed by the agency for failure to comply with this
13 subchapter.

14 (c) A person may challenge the completeness or accuracy of criminal
15 history information pursuant to § 12-12-1013.

16
17 20-48-708. Confidentiality.

18 (a) All reports obtained under this subchapter are confidential and
19 are restricted to the exclusive use of the Arkansas Crime Information Center,
20 the Identification Bureau of the Arkansas State Police, the licensing agency,
21 the service provider or requesting agency, and the person who is the subject
22 of the report.

23 (b) The information contained in reports shall not be released or
24 otherwise disclosed to any other person or agency except by court order and
25 is specifically exempt from disclosure under the Freedom of Information Act
26 of 1967, which begins at § 25-19-101, except to the licensing agency, the
27 service provider or requesting agency.

28
29 20-48-709. Immunity.

30 Individuals, the licensing agency, the service provider and a
31 requesting agency are immune from suit or liability for damages for acts or
32 omissions, other than malicious acts or omissions, occurring in the
33 performance of duties imposed by this section.

34
35 20-48-710. Exclusions - Licensed professionals - Completion of
36 criminal history record check.

1 (a) This subchapter shall not apply to persons who render care subject
2 to professional licenses obtained pursuant to:

3 (1) § 17-27-101 et seq., regarding licensed professional
4 counselors;

5 (2) § 17-103-101 et seq., regarding social workers;

6 (3) § 17-82-101 et seq., regarding dentists;

7 (4) § 17-87-101 et seq., regarding nurses;

8 (5) § 17-88-101 et seq., regarding occupational therapists;

9 (6) § 17-92-101 et seq., regarding pharmacists;

10 (7) § 17-93-101 et seq., regarding physical therapists;

11 (8) § 17-95-201 et seq., regarding physicians and surgeons;

12 (9) § 17-96-101 et seq., regarding podiatrists;

13 (10) § 17-97-101 et seq., regarding psychologists and
14 psychological examiners;

15 (11) § 17-100-101 et seq., regarding speech-language
16 pathologists and audiologists; or

17 (12) § 20-10-401 et seq., regarding nursing home administrators.

18 (b)(1) The term "professional license" shall not include
19 certification.

20 (2) Certified persons include certified nursing assistants and
21 certified home health aides.

22 (c) Any person who submits evidence of having maintained employment in
23 the State of Arkansas for the past twelve (12) months and of successfully
24 completing a criminal history record check within the last twelve (12) months
25 or in accordance with that person's professional license shall not be
26 required to apply for a criminal history record check under this subchapter.

27
28 20-48-711. Effective date - Criminal history record checks for
29 applicants and employees.

30 (a) All applicants for jobs involving direct care services to
31 developmentally disabled adult persons hired on and after the effective date
32 of this subchapter, shall apply for criminal history record checks.

33 (b) Service providers who offer direct care services to
34 developmentally disabled adult persons shall complete criminal history record
35 checks on all employees by October 1, 2002.

36 /s/ Rodgers